

SECTION D

SECTION D APPLIES IF THE PRICE OF THE CONTRACT EXCEEDS \$25,000

D.1 FAR 52.209-6 PROTECTING FERMCO AND THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1991)

(a) The Government suspends or debar subconcontractors to protect its interests. The Seller shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a subcontractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Seller shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Seller, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Government.

(c) A corporate officer or a designee of the Seller shall notify FERMCO, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Seller's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Seller has established to ensure that it is fully protecting FERMCO's and the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

D.2 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its Sellers and subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Seller hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Seller further agrees to cooperate in any

studies or surveys as may be conducted by the United States Small Business Administration, FERMCO, or the DOE or as may be necessary to determine the extent of the Seller's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is a least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements or 13 CFR 124. The Seller shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8 (a) of the Small Business Act. The Seller shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) Sellers acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

D.3 FAR 52.219-13 UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (AUG 1986)

(a) "Women-owned small businesses," as used in this clause, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

"Small business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on FERMCO contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Seller agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

(d) The Seller may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

D.4 FAR 52.220-3 UTILIZATION OF LABOR SURPLUS AREA CONCERNS (APR 1984)

(a) Applicability. This clause is applicable if this contract exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation.

(b) Policy. It is the policy of FERMCO to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Seller agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) Order of preference. In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," the Seller shall observe the following order of preference in awarding subcontracts;

(1) small business concerns that are LSA concerns,

(2) other small business concerns, and

(3) other LSA concerns.

(d) Definitions. "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services

in labor surplus areas exceed 50 percent of the contract price.

D.5 FAR 52.232-17 INTEREST (JAN 1991)

(a) Notwithstanding any other clause of this contract, all amounts, except amounts that are repayable and which bear interest under a Price Reduction for Defective Cost or Pricing Data clause, that become payable by the Seller to FERMCO under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date FERMCO transmits to the Seller a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Seller stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect of the date of this contract.

D.6 FAR 52.242-13 BANKRUPTCY (APR 1991)

In the event the Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Seller agrees to furnish, by certified mail, written notification of the bankruptcy to the FERMCO President. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of FERMCO Contract numbers and contracting offices for all FERMCO contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

D.7 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (APR 1984)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of

which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S. flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517)(Fly America Act) requires that all Federal agencies, FERMCO and Seller use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Seller agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that services by those carriers is available.

(d) In the event that the Seller selects a carrier other than a U.S.-flag air carrier for international air transportation, the Seller shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

**I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation); State reasons:.....
(End of certification)**

(e) The Seller shall include the substance of this clause, including the paragraph (e), in each subcontract or purchase order under this contract that may involve international air transportation.

D.8 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 1984)

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are:

(1) Acquired for a U.S. Government Agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

(b) The Seller shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this Contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Seller shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) FERMCO and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Seller.

(2) The Seller shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipment originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.
- (I) Total ocean freight revenue in U.S. dollars.

(d) Except for small purchases as described in 48 CFR 13, the Seller shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to--

(1) Small purchases as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-426-4610.

D.9 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

(a) FERMCO, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if FERMCO determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be --

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts --

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Seller for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, FERMCO may

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a

significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, FERMCO may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by FERMCO from records or documents in existence prior to the date of the contract award or modification.

(c) FERMCO may, at its election, reduce a Seller's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, FERMCO may terminate this contract for default. The rights and remedies of FERMCO specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

D.10 FAR 52.208-1 REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS (APR 1984)

(a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.

(b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes-olive, watch hole-straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly

polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number DE-ACO5-920R21972 shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Seller's or Seller subcontractor's order. If the order is declined or rejected, the Seller shall notify FERMCO promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Seller indebtedness to the Plant as determined by the Plant, FERMCO shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Seller agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Seller has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

D.11 FAR 52.215-26 INTEGRITY OF UNIT PRICES AND ALTERNATE I (APR 1991)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

(d) The Seller shall insert the substance of this clause, in all subcontracts.

Alternate I (APR 1991)

Substitute the following paragraph (c) if the contract is not the result of full and open competition.

(c) The Seller shall also identify those supplies which it will not manufacture or to which it will not contribute significant value. This information is not required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

D.12 DEAR 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (AUG 1992)

(a) Program Implementation. The Seller shall, consistent with 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to FERMCO and the Government, the Seller's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved program may render the Seller subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts. (1) The Seller agrees to notify FERMCO reasonably in advance of, but not later than 30 days prior to, the award of any lower-tier subcontract the Seller believes may be subject to the requirements of 10 CFR Part 707.

(2) The Seller shall develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the contract. FERMCO shall periodically monitor each Seller's implementation of the program for effectiveness and compliance with 10 CFR Part 707.

(3) The Seller agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.

D.13 FAR 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PRICE ADJUSTMENT (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Seller collective bargaining agreements.

(b) The Seller warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Seller in wages and fringe benefits to the extent that these increases or decreases are made to comply with --

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Seller shall notify FERMCO of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by FERMCO in writing. The Seller shall promptly notify FERMCO of any decrease under this clause, but nothing in the clause shall preclude FERMCO from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that FERMCO may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Seller shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) FERMCO or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Seller.